

ATTACHMENT B

OPTION 1 FOR DEFINING “SUBSTANTIAL FINANCIAL RISK (“NONNUMERICAL”)

- PART ONE: INTRODUCTION/PREAMBLE STATING REGULATORY GOAL
- PART TWO: THREE “SAFE HARBORS”
 - PROCESS “SAFE HARBOR” (see separate sheet)
 - FINANCIAL ARRANGEMENTS “SAFE HARBOR” (see separate sheet)
 - IMPACT “SAFE HARBOR” (see separate sheet)
- PART THREE: ANALYSIS OF ARRANGEMENTS OUTSIDE OF SAFE HARBORS

PROCESS "SAFE HARBOR"

* WRITTEN AGREEMENT

*AGREEMENT HAS--

- GOALS FOR COORDINATION OF CARE
- AVOIDANCE OF IMPROPER UTILIZATION
- IMPROVEMENT OF OUTCOMES

*DEFINED POPULATION (Size? Composition?)

*PROCESS FOR MONITORING PROGRESS

*BONA FIDE ENFORCEMENT MECHANISM

- INCENTIVES
- TERMINATION
- DENIAL OF PATIENTS

*MAY NOT BE OFFSET BY SWAP for FEE FOR SERVICE

*MUST PASS "LAUGH TEST"

FINANCIAL ARRANGEMENTS “SAFE HARBOR”

***GENERALLY RECOGNIZED MANAGED CARE ARRANGEMENTS**

-CAPITATION

-PERCENTAGE OF PREMIUM

-SUBSTANTIAL FEE WITHHOLD

(based on predetermined criteria - withhold large enough to influence the practice pattern of the provider - could add criteria to evaluate whether large enough)

-BONUS

(pool set aside and provider gets access by meeting criteria - might be aggregate performance - utilization could affect size of pool and/or distribution from pool)

-PENALTY

-GLOBAL FEES

-PROSPECTIVE PER DIEM

-DRG

***SUBJECT TO NO SWAP**

***CANNOT BE OFFSET**

(example: narrow risk corridor with reinsurance)

[*ACTUARIAL SOUNDNESS?]

IMPACT "SAFE HARBOR"

- * ASK WHETHER RISK SHARING ARRANGMENT INCREASES -
 - UTILIZATION IMPROPERLY; OR
 - COSTSIF ANSWER NO, ARRANGEMENT FALLS WITHIN SAFE HARBOR
- * UTILIZATION NOT IMPROPER IF INCREASE IS OF LOWER LEVEL SERVICES
- * DETERMINE IMPACT ON A PROSPECTIVE BASIS USING--
 - ACTUARIAL OPINION; OR
 - HISTORICAL DATA

**OPTION 2 FOR DEFINING “SUBSTANTIAL FINANCIAL RISK”
 (“NUMERICAL”)**

THIS OPTION HAS THREE ELEMENTS THAT ARE IN THE ALTERNATIVE

EACH ELEMENT IS SET OUT ON A SEPARATE SHEET

FIRST ELEMENT/ALTERNATIVE FOR OPTION 2 ("NUMERICAL")

* ARRANGEMENTS THAT QUALIFY WITHOUT MEETING A NUMERICAL STANDARD:

-CAPITATION

-PERCENT OF PREMIUM (AMOUNT PAID TO UPSTREAM CONTRACTOR)

-DRG

-CASE RATE (FIXED DOLLAR PER ADMISSION)

* ARRANGEMENT DOES NOT QUALIFY IF --

-NOT CONSISTENT WITH MARKET VALUE

-SIDE DEAL

-EXCESSIVE STOP-LOSS COVERAGE

SECOND ELEMENT/ALTERNATIVE FOR OPTION 2 (“NUMERICAL”)

* PERCENT OF RISK DETERMINED AS THE RATIO OF **B** OVER **A**, WHERE--

- **A** (DENOMINATOR) IS THE BASE PAYMENT RATE (AMOUNT RECEIVED DURING CONTRACT PERIOD); AND

- **B** (NUMERATOR) IS POTENTIAL UPSIDE GAIN ESTIMATED ON A REASONABLE BASIS - TIED TO UTILIZATION OR COST.

* IF PERCENT OF RISK MEETS A SPECIFIED STANDARD (to be set - suggested: 10%)

* DOES NOT QUALIFY IF “SHAM”

(“sham” to be further defined - example: cannot manipulate utilization target)

THIRD ELEMENT/ALTERNATIVE FOR OPTION 2 ("NUMERICAL")

*OTHER CIRCUMSTANCES WITH MERIT

*EXAMPLES:

- RURAL AREA
- SNF / THERAPIST
- HOSPITAL PER DIEM

*ROUGH IDEA -- "PLACE HOLDER" FOR CRITERION:

-AN ARRANGEMENT QUALIFIES FOR THE EXCEPTION IF AN ACTUARY (OR SOMEONE SIMILARLY QUALIFIED?) CERTIFIES THAT THE ARRANGEMENT IS CONSISTENT WITH GOOD MANAGED CARE PRACTICE (APPROPRIATE UTILIZATION OF CARE)

-ECONOMIC INCENTIVES